IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 4051 of 2007
Date of Decision : December 20, 2007

Punjab National Bank and another

....Appellants

Versus

Bakhshish Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. C.S. Pasricha, Advocate
for the appellants.

T.P.S. MANN, J.

The suit was filed by respondent herein for recovery of Rs. 1,50,000/- along with interest at the rate of 18% per annum as compensation for damages, harassment, humiliation, mental tension, etc., suffered by him due to his involvement by the present appellants in a civil suit without any reason or ground. The suit was decreed partly and the respondent was held entitled to recover a sum of Rs. 50,000/- as compensation along with interest at the rate of 8% per annum from the date of filing of the suit till its realisation. Aggrieved of the same, the appellants filed the first appeal, which was dismissed by learned Additional District Judge, Sirsa. Hence, the present second appeal by them under Section 100 of the Code of Civil Procedure.

In his suit, the respondent had pleaded that the defendant-Bank had earlier filed a suit in the year 1997 against one Major Singh,

wherein the respondent was also impleaded as party-defendant along with Major Singh. The said suit related to a loan obtained by Major Singh and it was alleged that the present respondent had a guaranteed the return of the loan. In fact, the respondent had never stood as guarantor nor had signed the alleged guarantee-deed dated 1.12.1988. According to him, there was another person in village Shamshabad, Patti, who was also known by the name of Bakhshish Singh and he might have stood guarantor for Major Singh. The father's name of the respondent was Deva Singh, whereas the father's name of other Bakhshish Singh was Khajan Singh. The guarantee-deed dated 1.12.1988 did not bear the father's name of the guarantor Bakhshish Singh. Though the said suit was decreed, but the respondent had filed an appeal, which was disposed of on 19.5.2000 and the impugned judgment and decree qua him was set aside and the case was remanded to the trial Court to decide it afresh. The Bank thereafter, impleaded aforesaid Bakhshish Singh son of Khajan Singh in place of the present respondent by describing him to be the guarantor of Major Singh. On account of his involvement in the recovery suit, wherein he stood absolved, his prestige has been lowered in the eyes of the society, especially, as he had retired as a P.A.S. Class-I Officer from Punjab Agriculture Department. He had to spend a huge amount to defend himself in the suit filed by the defendant-Bank. On account of mental shock and agony, his health had weakened to a great extent. Accordingly, he prayed for compensation to the tune of Rs. 1,50,000/-.

In the written statement, the appellants contested the claim of the respondent on the ground that one Bakhshish Singh stood as

guarantor for the due payment of the loan amount advanced to Major Singh and at the time of the advancement of the loan, he disclosed his father's name as Deva Singh. Before the filing of recovery suit, the Bank contacted both the borrower and the guarantor with a request to clear the account. The guarantor was also asked to submit the copy of *Jambandi* regarding ownership of his land. As such, a *Jambandi* was submitted by the guarantor after the same had been got prepared from the Halqa Patwari, wherein the father's name of the guarantor was mentioned as Deva Singh. Therefore, the suit for recovery was filed against the borrower and guarantor and the latter was described as son of Deva Singh. Later on, the Bank learnt that the guarantor had wrongly and fraudulently disclosed his father's name as Deva Singh and actually he was son of Khajan Singh. The plaint was, accordingly, amended so as to describe the guarantor as Bakhshish Singh son of Khajan Singh.

As mentioned above, the suit was partly decreed and the appeal filed by the present appellants thereafter dismissed.

According to learned counsel for the appellants, the following substantial questions of law arise in the present second appeal :-

(1) Whether the order of the courts below in granting compensation to the extent of Rs. 50,000/- with pendentelite and future interest despite the fact that the appellant/defendant was not guilty of malicious prosecution is sustainable ?

(2) Whether the order of the trial Court granting compensation of Rs. 50,000/- whereas the civil suit was for the recovery of an amount of Rs. 36,484/- in which the plaintiff alleges to have been wrongly arrayed as a defendant in the earlier civil suit is sustainable ?

(3) Whether the suit of the plaintiff/respondent was sustainable without joining Bakhshish Singh s/o Khajan Singh, who had been responsible for the fraudulent act ?

(4) Whether the suit of the plaintiff was maintainable despite the fact that he had not claimed any costs in the earlier civil suit either at the time of remand or at the time of amendment ?

(5) Whether the grant of compensation and interest by the learned lower Courts was sustainable ?

It is clear from the evidence led by the plaintiff as well as by the defendants that it was Bakhshish Singh son of Khajan Singh, who had stood guarantor for the due repayment of the loan advanced to Major Singh. Instead of impleading aforementioned Bakhshish Singh son of Khajan Singh as a party-defendant, the Bank impleaded Bakhshish Singh son of Deva Singh (respondent herein). As such, the latter had taken a specific stand in his written statement as well as before the learned trial Court trying the suit of the defendant-Bank that he never stood guarantor for the repayment of the loan advanced to Major Singh, but it was Bakhshish Singh son of Khajan Singh, who might have done so. Though,

the plea of the respondent was negatived by the learned trial Court, but his appeal was accepted and the case remanded to the learned trial Court for decision afresh. At that point of time, the Bank amended the plaint so as to describe the guarantor as Bakhshish Singh son of Khajan Singh, instead of the present respondent, namely, Bakhshish Singh son of Deva Singh. It was, thus, clear that the defendants-appellants had wrongly proceeded against the respondent in the recovery suit filed by them. In the said civil suit filed by the Bank, the respondent had to spent a huge amount to defend himself. He also suffered mental shock, pain, torture and agony. His reputation also suffered a dent because of the same, especially when he was a retired P.A.S. Class-I Officer. Therefore, the learned Courts below were justified in granting compensation to the tune of Rs. 50,000/- to the respondent. Mere fact that the earlier suit filed by the defendant-Bank was only for recovery of Rs. 36,484/- was no ground to hold that the respondent could not be granted compensation to the tune of Rs. 50,000/-. The valuation of the suit, in which the respondent had been wrongly tried was immaterial to determine the amount of compensation payable to him. Though, Bakhshish Singh son of Khajan Singh, who was one who stood as guarantor for the repayment of the loan of Major Singh has not been impleaded as a party to the present suit filed by the respondent, yet that is not sufficient to deny the grant of relief to the respondent. The defendant-Bank itself admitted its mistake in wrongly prosecuting the respondent as a guarantor when it amended its written statement so as to implead Bakhshish Singh son of Khajan Singh in place of the present respondent. It was only after the decision of the

earlier recovery suit in appeal and the consequential amendment of the plaint by the defendant-Bank that cause of action arose to the respondent to claim sum of money as compensation. Therefore, the amount of compensation as well as the interest thereupon in favour of the respondent is fully justified.

No such questions of law, much less substantial questions of law, as claimed by the appellants, arise for determination in the present appeal. Both the learned lower Courts have relied upon evidence led by the parties so as to grant relief to the respondent for recovery of Rs. 50,000/- as compensation along with interest. No case is made out for any interference in the concurrent findings of facts arrived at by the learned Courts below.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

December 20, 2007
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Whether to be referred to the Reporters : **YES / NO**